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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BRIANT CHUN-HOON and CARLO
 GUGLIELMINO,

Plaintiffs,

v.

MCKEE FOODS CORPORATION, a
 Tennessee corporation; and DOES 1 through
 100, inclusive,

Defendants.

Case No. C05-00620 VRW

**[PROPOSED] ORDER GRANTING FINAL
 APPROVAL OF CLASS ACTION
 SETTLEMENT**

Date: March 11, 2010
 Time: 10:00 a.m.
 Courtroom 6, 17th Floor

Hon. Vaughn R. Walker

1 On March 11, 2010, the Court held a hearing on the parties' Joint Motion for Final Approval
2 of Class Action Settlement (Doc # 103) and Plaintiffs' Motion for Attorneys' Fees and Costs (Doc #
3 106). The parties' proposed settlement (the "Settlement") is set forth in their Joint Stipulation of
4 Settlement and Release (Doc # 94) and in the Settlement Agreement attached thereto as Exhibit A
5 (the "Settlement Agreement"). By Order entered on October 15, 2009 (the "Preliminary Approval
6 Order") (Doc # 100), the Court granted preliminary approval of the proposed Settlement and also
7 approved the form and manner of notice proposed by the parties. In accordance with the Preliminary
8 Approval Order, the Class Members have been given notice of the terms of the Settlement and the
9 opportunity to comment on, object to, or exclude themselves from its provisions.

10 Having reviewed and considered the Settlement Agreement, the supporting papers filed by
11 the parties, the positive response of the Class Members to the Notice, and the evidence and argument
12 received by the Court at both the preliminary approval hearing on September 24, 2009, and the final
13 approval hearing on March 11, 2010, the Court, by means of this Order (the "Final Approval
14 Order"), grants final approval of the Settlement and HEREBY ORDERS and MAKES
15 DETERMINATIONS as follows:

16 1. Except as specified herein, all defined terms set forth in the Settlement Agreement are
17 adopted by the Court for purposes of this Final Approval Order.

18 2. This Court has jurisdiction over the subject matter of this litigation and all related
19 matters and all claims raised in this action and released in the Settlement Agreement. This Court
20 also has personal jurisdiction over the parties and the Class Members.

21 3. McKee provided notice of the Settlement to the Class Members in accordance with
22 the provisions of the Settlement Agreement and Preliminary Approval Order. McKee sent each
23 Class Member a Notice of Class Action, Claim Form, and Exclusion Form via first-class mail and
24 sent supplemental notices to Class Members whose initial mailings were returned as undeliverable.
25 The Notice of Class Action, Claim Form, and Exclusion Form informed Class Members of the terms
26 of the Settlement and of their rights to participate in the Settlement, to comment on or object to the
27 Settlement, and to appear in person or by counsel at the final approval hearing. These papers further
28 informed Class Members of their right to exclude themselves from the Settlement and to pursue their

own remedies and of the fact that Class Members who did not submit timely exclusion forms would be bound by the terms of the Settlement. The notice period approved by the Court and the procedures which were followed provided sufficient time for Class Members to exercise their rights.

4. A total of 329 class notices were mailed by McKee. No Class Member has objected to the Settlement or stated his or her intent to appear at the final approval hearing. A total of 132 claim forms were received, and only 16 Class Members elected to exclude themselves from the Settlement.

5. This Court finds that the notice procedure described above afforded adequate protections to the Class Members and provides a basis for the Court to make an informed decision regarding approval of the Settlement based on the positive response of the Class Members. The Court finds that the notice provided in this case was the best notice practicable under Federal Rule of Civil Procedure 23 and satisfied the requirements of law and due process.

6. Pursuant to the Settlement Agreement and the Court's June 6, 2006, Order Provisionally Certifying a Damages Class Under Rule 23(b)(3) (Doc # 59), the Class is defined as "all independent distributors of McKee products in California who signed written Distributorship Agreements with McKee after December 31, 2000." The provisionally certified Class is approved for purposes of the settlement of this action pursuant to Federal Rule of Civil Procedure 23.

7. The Court confirms as final the appointment of Plaintiffs Briant Chun-Hoon and Carlo Guglielmino as the Class Representatives under Federal Rule of Civil Procedure 23.

8. The Court confirms as final the appointment of Markun, Zusman & Compton, LLP, as Class Counsel.

9. The Court hereby approves the Settlement set forth in the Settlement Agreement and finds that said Settlement is, in all respects, fair, reasonable, adequate and in the best interest of the Class. In making this determination, the Court has given due consideration to the factors which are to be considered in determining whether final approval of a class action settlement should be granted, as set forth in Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998). Those factors include but are not limited to the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status throughout the proceedings; the consideration offered in

1 settlement; the extent of discovery completed and the stage of the proceedings; the experience and
2 views of counsel; and the reaction of the Class Members to the proposed Settlement. Id. These
3 factors, as applied to the instant case, support the Court's decision to grant final approval of the
4 Settlement. Among other things, there is significant risk that Plaintiffs would be unsuccessful in
5 their claims against McKee and, in particular, in establishing that the distributors of McKee products
6 are employees and not independent contractors. The risk of decertification is present in this case.
7 The Settlement is beneficial to the class and provides fair and adequate consideration, particularly in
8 light of the risks associated with the continued prosecution of the case. The case was settled
9 following significant discovery and investigation of Plaintiffs' claims and McKee's defenses. The
10 Settlement was the result of extensive arms-length negotiations and was achieved with the aid of an
11 experienced mediator. Plaintiffs' attorneys are experienced class action litigators, strongly support
12 the Settlement, and have expressed the view that the Settlement is fair, reasonable and adequate. No
13 objections to the Settlement have been filed, and only 16 Class Members have chosen to exclude
14 themselves from the Settlement.

15 10. McKee has advised the Court that nine (9) individuals or business entities were
16 appointed as distributors of McKee products subsequent to the mailing of the class notices and
17 related documents on October 28, 2009. Any provision of the Settlement Agreement and/or this
18 Final Approval Order notwithstanding, the Court finds that distributors appointed after the mailing
19 of the class notices shall not be considered part of the Class and shall not be bound by the
20 Settlement.

21 11. The Court has carefully reviewed and considered the Motion for Attorney's Fees and
22 Costs filed by Class Counsel, Markun, Zusman & Compton, LLP. The Court finds and determines
23 that said Motion is well taken and properly supported and should be granted. Specifically, the Court
24 finds that the proposed service payments to the Plaintiffs/Class Representatives, Briant Chun-Hoon
25 and Carlo Guglielmino, in the amount of \$5,000.00 each are fair and reasonable. The Court finds
26 that the payment of attorneys' fees in the amount of \$255,000.00 and the reimbursement of expenses
27 in the amount of \$34,156.07 to Class Counsel are fair and reasonable. Accordingly, the Court
28 hereby gives final approval to and orders the payment of the aforesaid service payments to the

